

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Cesar Sevilla-Acosta,

Case No. 20-cv-0821 (WMW/KMM)

Petitioner,

**ORDER**

v.

B. Birkholz, *Warden*,

Respondent.

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This matter is before the Court on Petitioner Cesar Sevilla-Acosta's Motion for Leave to Proceed on Appeal In Forma Pauperis (IFP Motion), (Dkt. 13), and his Application to Proceed in District Court Without Prepaying Fees or Costs (IFP Application), (Dkt. 14).<sup>1</sup> For the reasons addressed below, the IFP Application is granted and the IFP Motion is denied as moot.

In the October 19, 2020 IFP Motion, Sevilla-Acosta asks this Court for permission to proceed *in forma pauperis* (IFP) on appeal. The IFP Motion asserts that Sevilla-Acosta is indigent, but the motion does not include the required statement of assets.<sup>2</sup> The Court

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<sup>1</sup> Sevilla-Acosta prepared the IFP Application on a form for applying for IFP status in district court. But because this case's procedural context makes clear that Sevilla-Acosta seeks to proceed IFP on appeal, the Court construes the IFP Application as such.

<sup>2</sup> Under 28 U.S.C. § 1915(a)(1), "[s]ubject to [§ 1915(b)], any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit *that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.*" (Emphasis added.)

received Sevilla-Acosta's IFP Application on October 23, 2020. This document provides a full statement of assets. Based on the information provided in the IFP Application, Sevilla-Acosta's request to proceed IFP on appeal is ripe for review.

Having reviewed Sevilla-Acosta's IFP Application, the Court concludes that Sevilla-Acosta satisfies the financial qualifications for IFP status. Furthermore, although the Court continues to believe that it correctly dismissed Sevilla-Acosta's petition for a writ of habeas corpus, his appeal is not frivolous as the Supreme Court of the United States has defined that term. *See Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (defining “frivolous” as clearly baseless). Accordingly, the IFP Application is granted. Consequently, the Court denies Sevilla-Acosta's IFP Motion as moot.

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. Petitioner Cesar Sevilla-Acosta's Application to Proceed in District Court Without Prepaying Fees or Costs, (Dkt. 14), is **GRANTED**.
2. Petitioner Cesar Sevilla-Acosta's Motion for Leave to Proceed on Appeal *In Forma Pauperis*, (Dkt. 13), is **DENIED** as moot.

Dated: November 12, 2020

s/Wilhelmina M. Wright  
Wilhelmina M. Wright  
United States District Judge